

TCEQ DOCKET NO. 2013-1511-MWD

APPLICATION BY LENNAR HOMES OF	§	BEFORE THE
TEXAS LAND AND CONSTRUCTION,	§	TEXAS COMMISSION ON
LTD. FOR PERMIT NO. WQ0015065001	§	ENVIRONMENTAL QUALITY

**APPLICANT’S RESPONSE TO HEARING REQUEST**

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Lennar Homes of Texas Land and Construction, Ltd. (“Applicant”), and files this response to the hearing request made by Herman Collette on behalf of Frances Foulks regarding the application for Permit No. WQ0015065001. Applicant respectfully urges the Texas Commission on Environmental Quality (the “Commission” or “TCEQ”) to deny the hearing request because it does not raise any issue relevant to the Commission’s decision whether to grant the permit.

**I. BACKGROUND**

Applicant has applied for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.15 million gallons per day (“MGD”) in the first phase, not to exceed 0.30 MGD in the second phase, and not to exceed 0.60 MGD in the final phase. The wastewater treatment facility will be located in Montgomery County 3,700 feet east of the intersection of Roman Forest Boulevard and U.S. Highway 59. The discharge route will be first to a drainage ditch; then to an unnamed tributary; and then to Caney Creek in Segment No. 1010 of the San Jacinto River Basin. Notice of the application was given as provided by the TCEQ’s rules. The TCEQ Executive Director has recommended issuance of the permit. Ms. Foulks was the only person to file public comment, and the request filed by Ms. Foulks was the only hearing request filed concerning the application.

## II. THE HEARING REQUEST SHOULD BE DENIED

Ms. Foulks' hearing request does not identify any issue relevant to the Commission's consideration of a wastewater discharge permit; therefore, it should be denied. This application is subject to Chapter 55, Subchapter F, of the TCEQ rules. A hearing request may be filed by an affected person "when authorized by law." 30 Tex. Admin. Code § 55.201(b)(4). An "affected person" is defined as "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest *affected by the application.*" *Id.* § 55.203(a) (emphasis added). A hearing request must comply with Section 55.201 of the TCEQ rules. Among other criteria that must be met, Subsection (d) of that rule provides that a hearing request must "identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public." *Id.* § 55.201(d)(2). The Commission considers various factors when deciding whether to grant a hearing request, including "whether the interest claimed is one protected by the law under which the application will be considered." *Id.* § 55.203(c)(1). Under Section 55.211(c)(2)(A), a hearing request made by an affected person may be granted only if it "raises disputed issues of fact that were raised during the comment period, that were not withdrawn . . . , and *that are relevant and material to the commission's decision on the application,*" and it complies with Section 55.201. (Emphasis added.)

Although Ms. Foulks' letter initially references "owners of properties," it does not identify any property owners other than Ms. Foulks. She does not explain the location of her property in relation to the proposed treatment facility. Applicant notes that she owns property

adjacent to the 1,044 acre parcel that, when developed, will be served by the proposed wastewater treatment plant. Ms. Foulks owns the properties identified as 85 and 86 on the map attached hereto as Exhibit “A.” As shown on the exhibit, her property is not adjacent to the plant site or discharge point, and her property line is more than a mile downstream from the discharge point. Even if Ms. Foulks could potentially be considered an affected person based on the location of her property, however, the hearing request does not raise any issue that is relevant to the Commission’s decision on the wastewater discharge permit sought by Applicant.

The first issue raised by Ms. Foulks concerns Applicant’s choice of one discharge route over another. The Commission must review the application that it is filed and determine whether the permit should be granted based on the information in that application. As the Executive Director noted in the Response to Public Comment, the Commission “does not have the authority to mandate a different discharge location or different type of wastewater treatment plant.” Executive Director’s Response to Public Comment at 4. The first issue raised by Ms. Foulks has no bearing on the application that was filed and therefore it is not relevant to the Commission’s decision on the application.

Issues 2 and 3 raised by Ms. Foulks relate to stormwater issues rather than the wastewater discharge permit Applicant is seeking in this proceeding. Her letter requests a hearing to consider:

- 2) Alteration of existing soil percolation and resulting increase outflow into “Pumpkin Gully” as development progresses.<sup>1</sup>
- 3) *Other issues resulting in rerouting of storm water* that normally now flows adjacent to Railroad Road and across Comer Reinhard [sic] Road into Caney Creek.

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<sup>1</sup> The hearing request does not identify the location of “Pumpkin Gully.”

(Emphasis added). Applicant has applied for a wastewater discharge permit. Ms. Foulks appears to be concerned that future land development will alter stormwater flows. Although the Commission does regulate stormwater discharges, that issue is not relevant to the Commission's consideration of a wastewater discharge permit.

Issue 4 raised by Ms. Foulks is the "[p]otential resultant erosion of 'Pumpkin Gully' due to the increase in total flow *as a result of the development.*" (Emphasis added). As noted above, Ms. Foulks does not indicate where "Pumpkin Gully" is located. In any event, this issue appears to relate also to the future development of the land and stormwater management issues, rather than the wastewater discharge permit. Even if it is somehow intended to relate to the wastewater discharge permit, the issue of possible future erosion of a waterway's banks is outside the scope of the Commission's review of a wastewater discharge permit, which is limited to water quality issues.

The final concern raised by Ms. Foulks also relates to the land development rather the wastewater discharge permit. Her letter requests a hearing to consider "[o]ther potential issues resulting from potential degradation of habitat *from the development.*" (Emphasis added). While the Commission's review of a wastewater discharge permit does consider aquatic life uses in the receiving stream, the effect of a land development on habitat is not relevant to that review and therefore not a basis to grant a contested case hearing.

In sum, Ms. Foulks has not raised any issue that is relevant and material to the Commission's decision on the application at issue here. Lennar Homes of Texas Land and Construction, Ltd. therefore respectfully urges the Commission to deny Frances Foulks' hearing request and issue Permit No. WQ0015065001.

Respectfully submitted,

COATS, ROSE, YALE, RYMAN & LEE, P.C.

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## CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing on this 30th day of August, 2013 on the following:

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**TAVOLA**  
**EXHIBIT A**  
 August 2013

**LEGEND**

- WMTP
- 1 Mile Discharge Route (52807)
- From 1 Mile to Property Line (6255)
- From Tavola to Respondents Property Line (10755)
- Point of Discharge
- Tract Boundary
- Parcels

**AERIAL PHOTOGRAPHY DATE: MARCH 2012**  
 THIS PRODUCT IS FOR THE TAVOLA TRACTS, PARCELS 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

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